

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.) Case No. CR-12-021-Raw
)
LENNOARD HARE,)
)
Defendant.)

ORDER

Before the court is the government's second notice of intent to offer evidence pursuant to Rule 404(b) F.R.Evid. The notice was filed June 19, 2012. The pretrial conference has been held, the jury has been selected, and the case is scheduled for trial on June 27, 2012. Rule 404(b) requires that the government provide "reasonable notice" to the defendant. The government states that the existence of the evidence only came to its attention on June 19, 2012. Nevertheless, under the present circumstances the court concludes this is not reasonable notice.

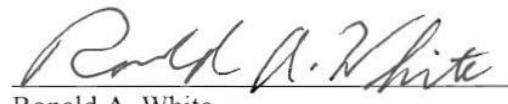
The court also has doubts about admission of the evidence on the merits. The government seeks to introduce evidence of defendant being arrested for a similar offense on or about January 28, 2008, three years before the incident in question. The government correctly notes that in *United States v. Moran*, 503 F.3d 1135 (10th Cir.2007), the Tenth Circuit permitted evidence of a prior conviction that was over 12 years old. In the case at bar, however, it is unclear if the prior incident resulted in a conviction. The lack of temporal proximity concerns the court. Moreover, the court has already admitted pursuant to Rule 404(b) an incident which took place subsequent to the crime charged. There is a danger that more time will be spent and evidence examined on incidents other than the alleged crime itself. Despite any limiting instruction by the court, a great risk would be

created that the jury might reach its decision on some sort of “criminal propensity” basis, which is improper. One factor in considering admission of Rule 404(b) evidence is whether the probative value of the similar acts is substantially outweighed by its potential for unfair prejudice. *United States v. Morris*, 287 F.3d 985, 990 (10th Cir.2002). The court finds this is such a situation.

It is the order of the court that the evidence presented in plaintiff's second notice (#66) will not be admitted.

ORDERED THIS 21st DAY OF JUNE, 2012.

Dated this 21st day of June, 2012.



Ronald A. White
Ronald A. White
United States District Judge
Eastern District of Oklahoma